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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-94
Testing New Technology	)	
	)	

BELLSOUTH REPLY

BellSouth Corporation, on behalf of its affiliated companies (collectively "BellSouth"), hereby submits this Reply to comments submitted in response to the Commission's *Notice of Inquiry*[1] in the above-referenced proceeding.

In the *Notice*, the Commission solicited comment on the effects of existing Title II regulations on experiments involving advanced telecommunications technology conducted by firms subject to those regulations.[2] In particular, the Commission solicited comment on actions it might take to modify or eliminate existing regulatory disincentives to conducting technical or market trials of new technologies.

On the whole, commenters supported the Commission's initiative in this proceeding, although several agreed with BellSouth that regulatory relief for trial activities would serve only a limited purpose if not coupled with removal of regulatory disincentives to actual commercial introduction of the service. A number of commenters also cautioned the Commission against simply replacing one regulatory scheme with another under the guise of eliminating needless regulation. The comments of one party urging application of the full panoply of regulations

[1] *1998 Biennial Review -- Testing New Technology*, CC Docket No. 98-94, FCC 98-118, Notice of Inquiry (rel. June 11, 1998) ("Notice").

under Sections 251, 252 and 271 to ILEC technical and market trials serve to underscore the legitimacy of that concern. Finally, although the *Notice* focused on experiments with new technologies by entities subject to Title II regulation. several parties raised concerns with respect to experimental licenses for use of spectrum under Title III. BellSouth addresses each of these areas of interest below.

I. Regulatory Relief for Testing and Trials Provides Little Benefit Without Concurrent Relief for the Offering of Services.

The Commission initiated this inquiry pursuant to Sections 10 and 11 of the Communications Act[3] to further the policy objectives embodied in Sections 7[4] and 706.[5] Collectively, those sections reflect the indisputable will of Congress that the Commission pursue systematic deregulation of the telecommunications industry, particularly where existing regulation inhibits introduction or deployment of advanced technologies, services, or infrastructure. The Commission's initiative in this proceeding to eliminate regulatory obstacles to testing new services and technologies is fully consistent with that Congressional direction.

Yet, as BellSouth and other commenters[6] observed, relaxation or removal of rules governing technical trials or market trials alone will be insufficient to stimulate or facilitate the rapid deployment of advanced infrastructure intended by Congress. As Ameritech observed, "[s]imply minimizing the impact of regulation on testing, without minimizing its impact on the

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[2] *Notice* at ¶ 11.

[3] The Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.* (the "Act" or "Communications Act").

[4] 47 U.S.C. § 157.

[5] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 706, "Advanced Telecommunications Incentives" ("1996 Act, § 706").

[6] Ameritech Comments at 2-3; USTA Comments at 6-7.

rest of the deployment process, will do little to relieve the chilling effect on innovation."[7] USTA adds that absent relief from regulation of the *offering* of services, "[t]he number of Commission proceedings, the delay in Commission decisions, ongoing litigation and the administrative burden and cost of regulation" will continue to disserve the American public, regardless of the scope of relief afforded tests and trials.[8]

These comments are consistent with BellSouth's own observation that "[o]nly through elimination of the artificial barriers to the *offering* of advanced services and technologies will the American public realize the benefits attainable through such offerings; mere relaxation of the rules under which carriers can *test* new offerings will have comparatively little beneficial effect."[9] Accordingly, BellSouth continues to urge the Commission to conduct this proceeding in deliberate coordination with its required proceedings under Section 706, to actively "encourage the *deployment* ... of advanced telecommunications capability"[10] and to "take immediate action to accelerate *deployment* of such capability by removing barriers to infrastructure investment."[11]

II. The Commission Should Deregulate Trials, Not "Alternatively Regulate" Them.

Within the context of the broader need for relief for the commercial introduction of advanced services and technologies, parties generally agreed that elimination of regulation of technical and market trials would remove existing disincentives for such desirable undertakings.

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[7] Ameritech Comments at 3.

[8] USTA Comments at 6-7.

[9] BellSouth Comments at 3-4.

[10] 1996 Act, § 706(a) (emphasis added).

[11] 1996 Act, § 706(b) (emphasis added).

Several parties cautioned the Commission, however, not simply to replace one form of regulation with another. Additionally, the comments of Intermedia validate US West's concern that this proceeding not result in the application of new requirements where none exist presently.

Although there was some lack of consensus on the details, parties showed widespread concern that the Commission not adopt arbitrary size, duration, or scope limitations on technology or market trials.[12] Nor should the Commission apply to trials the same tariffing, pricing, bundling, or network disclosure requirements that attach to general service offerings.[13] Similarly, a number of parties joined BellSouth urging the Commission not to impose any pre-approval requirement for trial activities.[14] All requirements of this type would serve only to stifle the very flexibility the Commission is seeking to achieve through this proceeding.

The Commission specifically should reject Intermedia's attempt to fabricate *new* burdens for ILECs' (or their subsidiaries') trial activities ostensibly under Sections 251, 252, and 271 (for BOCs) of the Act.[15] Intermedia's proposals are transparently anticompetitive. By proposing full advance disclosure of ILECs' trial plans, including pricing information and other aspects of market trials, Intermedia is blatantly seeking access to proprietary commercial or technical information.[16] Its proposal that carriers be required to terminate service to trial participants upon commercial availability of the offering would serve only to inconvenience the customer and disrupt an existing customer-carrier relationship. Finally, Intermedia's proposal that ILECs be required to invite competing carriers to participate in their trials (and to delay trials 90 days to

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[12] USTA Comments at 5; Bell Atlantic Comments at 7.

[13] USTA Comments at 5-6; Bell Atlantic Comments at 5-6; SBC Comments at 3.

[14] USTA Comments at 4-5; Bell Atlantic Comments at 3-4. *But, see,* note 23, *infra.*

[15] Intermedia Comments at 3-5.

[16] *Compare* Bell Atlantic Comments at 7, noting that trials may involve testing of proprietary technology.

accommodate such carriers' "possible" plans) would limit ILECs' flexibility in designing and conducting their trials and would stall their service deployment process.[17]

In sum, Intermedia's proposals represent a "worst-case scenario" outcome of this proceeding that is antithetical to the Commission's stated objectives. Indeed, the Commission's goals would be better served by doing nothing in this proceeding rather than by adopting the heavy-handed regulatory governance of trials advocated by Intermedia. Accordingly, Intermedia's proposals should be rejected.

III. Activities Under Experimental Radio Licenses Must Not Interfere with Incumbent Carriers' Operations.

Although the *Notice* indicated that its focus was on "existing Title II regulations" and on trials "by firms subject to these regulations," a few parties expressed concern that the Commission's deregulatory initiatives in this proceeding not come at "the expense of existing authorized telecommunications carriers that have been licensed to offer commercial services in their assigned spectrum."[18] This concern seems to stem from what appears to be a gratuitous recognition in the *Notice* of radio licensing as an *example* of regulation of experimental activities, which recognition is then apparently engulfed inadvertently in a sweeping request for comments on whether any rules "in these areas" should be relaxed.[19] Nevertheless, to the extent the Commission did intend this proceeding to encompass potential relaxation of rules governing

[17] *Compare, id.*

[18] Airtouch Comments at 2.

[19] *Notice* at ¶ 11.

experimental use of licensed radio spectrum, BellSouth concurs with AirTouch that any resultant regulatory framework must continue to protect existing operators.[20]

Indeed, based on past experiences with an experimental licensee which will not be re-chronicled here,[21] BellSouth urges the Commission (if it addresses experimental radio licensing in this proceeding) to strengthen its Part 5 Rules.[22] Specifically, the Commission should clarify that if an experiment causes *any* interference, the experimental licensee must immediately eliminate the interference or cease operations. Such clarification is necessary to eliminate the opportunity for an inference under existing rules that an experimental licensee's need for testing may be balanced against the level of interference experienced by an incumbent licensee. The rules are simple -- testing must cease if *any* interference is caused. Clarification is in order to avoid future results like those referenced above.[23]

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[20] AirTouch Comments, *passim*.

[21] *But, see*, AirCell, Inc., Experimental Radio Station Construction Permit and License, Call Sign K12XCS, File No. 4555-EX-PL-4, Condition No. 4 (eff. Dec. 28, 1994); AirCell, Inc., Petition for Waiver or Declaratory Ruling (Oct. 9, 1997) ("AirCell Petition"); Opposition of BellSouth Cellular Corp. and GTE Wireless Products and Services to AirCell Petition (Dec. 15, 1997); Comments of AirTouch Communications, Inc. to AirCell Petition (Dec. 15, 1997); Letter from Richard M. Smith, Chief, Office of Engineering and Technology to David L. Sieradzki and Joel S. Winnik, dated Feb. 11, 1998. In short, AirCell was permitted to continue and even to expand its licensed experiment, notwithstanding demonstrable evidence from BellSouth and other cellular providers of harmful interference to their cellular services.

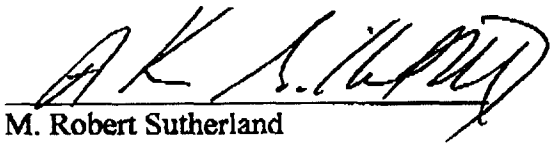
[22] 47 C.F.R. § 5.1 *et seq.*

[23] Moreover, because of the potential for interference by experimental services and the difficulty of locating the source of any such interference for incumbent licensees, BellSouth supports a minimal (*e.g.*, 30 day) advanced notification of the nature and scope of any proposed experimental test using radio spectrum. Such a requirement would permit incumbent licensees independently to review an experimental proposal to verify that it does not pose an interference problem to the operations of incumbent licensees.

CONCLUSION

For the reasons set forth above and in its Comments, BellSouth supports the Commission's deregulatory initiative in this proceeding, but urges the Commission to recognize that the real incentives for innovation and deployment of advanced infrastructures and technology lie in the opportunity to earn rewards from the commercial offering of such capabilities. The Commission also should reject attempts to saddle ILECs' trial activities with additional burdens. Finally, to the extent the Commission addresses experimental radio licensing, it should ensure that its rules effectively preclude interference to incumbent licensees' operations.

Respectfully submitted,
BELLSOUTH CORPORATION

By: 

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 5th day of August, 1998, served all parties to this action with a copy of the foregoing Reply by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

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